

TOWN OF UXBRIDGE ZONING BOARD OF APPEALS RULES AND REGULATIONS

These rules and regulations are adopted by the Zoning Board of Appeals of Uxbridge under the authority of the General Laws of the Commonwealth of Massachusetts, Chapter 40A, Section 12.

These rules and regulations, as amended from time to time, become effective upon their filing with the Uxbridge Town Clerk and supersede any previously filed with the Clerk.

1. GENERAL

1.1 Jurisdiction of the Board. In accordance with MGL ch. 40A, Section 14, and the Bylaws of the Town of Uxbridge, the Board hears appeals from anyone denied a Uxbridge building permit; denied zoning enforcement action by the Town of Uxbridge; seeking to overturn a decision by the Zoning Enforcement Officer; seeking a special permit or variance under MGL ch. 40A; appealing under MGL ch. 41, Sections 81Y to 81CC; or a comprehensive permit.

1.2 Composition of the Board. In accordance with MGL ch. 40A, Section 12, and Uxbridge Bylaws, the Board consists of three regular and two associate members. An associate member, selected by the chair, sits as a voting member of the Board only when a regular member is absent or recused due to a conflict of interest or other inability to act. When unrecused associate members are not sitting on the panel as a voting member, they remain at the Board table and participate in the discussion.

1.3 Chair and clerk of the Board; term limits. In accordance with MGL ch. 40A, Section 12, all the members of the Board annually elect one regular member to serve as chair and a regular or associate member to serve as clerk. No member may serve more than two consecutive one-year terms as chair. This rule can be waived for one additional year under extraordinary circumstances, such as the refusal of any other member to chair the Board. The clerk shall ensure that records are kept, as required by state law, of the hearings conducted by the Board. In the clerk's absence, an acting clerk shall be appointed by the members present to ensure that the records are kept.

1.4 References. Any proceeding before the Board, whether an application for zoning relief, a petition for a variance, an appeal of the Zoning Enforcement Officer's decision, or an application for a comprehensive permit, is referred to in these Rules and Regulations as an application. Section references are to Town "Zoning Bylaws."

1.5 *Conflict between these rules and the local or state zoning laws.* It is intended that the Zoning Bylaws shall govern in all respects regarding these rules and regulations. If there is any conflict between the provisions of these rules and the Zoning Bylaws, the Bylaws prevail. If there is any conflict between these rules and the General Laws of the Commonwealth of Massachusetts pertaining to zoning and the control of subdivisions, the General Laws prevail.

2. APPLICATION FOR HEARINGS

2.1 *Form of application.* Each application for action by the Board must be made on the official form (which is available from the Zoning Department) and filed with the Town Clerk in one signed original. This filing is made by submitting the signed original to the Zoning Board of Appeals Building Department, and the staff will deliver it to the Town Clerk for filing. The applicant is responsible for ensuring that all relevant boxes on the form are completed and all required information has been filled in.

2.2 *Time for filing applications.* Any application appealing an order or decision of the Building Commissioner or Zoning Enforcement Officer must be filed within 30 calendar days from the date of the order or decision being appealed. Other applications (e.g. requests for comprehensive permits) may be filed at any time.

2.3 *Authority of applicant.* Any application brought by anyone other than the record owner of the property affected must give the name of the record owner and explain the applicant's relationship to the owner (e.g., lessee, holder of an option to purchase, attorney). The applicant must submit evidence at or before the hearing of the record holder's consent to the application being filed and heard, as well as relevant documents evidencing the applicant's authority or standing to bring the application. Relevant documents include but are not limited to: deeds evidencing ownership; signed purchase-and-sale agreements, leases, options to purchase; documents evidencing the identity of any current trustees.

2.4 *Materials that must be filed with the application.* Every application for a variance, special permit, or appeal from a decision of the Building Commissioner /Zoning Enforcement Officer must be accompanied by the materials specified in the Application Checklist available from the Building Department. To file a petition appealing the Zoning Enforcement Officer's decision to seek enforcement action (or the decision not to seek enforcement action), the petitioner must file an application on the official form and those additional materials specified separately in the Checklist or designated by the Building Commissioner.

These *mandatory materials* include, but are not limited to:

2.4.1 *Plan of the site.* The plan (in nine copies) must be dated and manually signed by a registered engineer or registered land surveyor, and drawn to scale. The Board may, when necessary, require the plan to be an instrument survey. The plan must show ALL of the following:

- (a) boundaries and dimensions of the applicant's lot or lots
- (b) the name and, where available, the width of all abutting streets or ways
- (c) the measurement of all setbacks (i.e., from the front property line, center of the right of way, all side property lines, and the rear property line)
- (d) the location and dimensions of all existing and proposed buildings, structures, accessory structures, and driveways
- (e) to the extent material to the application, all parking spaces, service areas, and other open uses
- (f) significant spot elevations in relation to mean sea level
- (g) all principal landscape features, including fences, walls, planting areas, walks, tree lines

2.4.2 *Topographical plan.* If the applicant proposes changes in the property's existing topography or if the property in question is in the flood plain in whole or in part, a separate plan must be filed showing the grade lines.

2.4.3 *Building elevations.* Every application for a variance or a special permit must be accompanied by elevations of all existing and proposed construction. The elevations must show the building's dimensions, including the height from grade to the roof ridge and to the highest architectural element (if higher). The elevation must also indicate the heights of any existing buildings.

2.4.4 *Set of plans, or sketches.* Every application contemplating the construction or alteration of one or more buildings must be accompanied by a floor plan showing the location, dimensions, and use of rooms within the building. This can be an architect's set of plans; if none is available, with the approval of the ZBA, the applicant may submit a hand-drawn plan in scale (of one/eighth or one/fourth inches equals one foot).

2.4.5 *Board of Health approval.* Every application must be accompanied by a letter signed by the Board of Health indicating its approval of any septic plans and a copy of the plans so approved; or a letter signed by the Board of Health indicating that it will not require any changes to the existing septic system.

2.5 *Inadequate plans or forms.* The Board may in its discretion reject any plan as inadequate and may dismiss, with or without prejudice, any application for the failure to file adequate plans or to complete the application form or for non filing of application fee. The Board may also ask the applicant to supplement the submission with additional information.

2.6 *Other materials that can be filed with applications.* Applicants may provide the Board with any other pertinent materials they wish. These

voluntary materials include letters from abutters and neighbors, photographs of the site and neighborhood, analysis of the neighborhood's character (e.g., average setback, lot size, house size), written narratives.

2.7 Mechanism for filing accompanying materials. All mandatory accompanying materials must be filed in nine copies and submitted to the Zoning Department at the time of filing the official application. Other than photographs of the site and neighborhood, all voluntary accompanying materials must be filed in nine copies and submitted to the Building Department no later than fourteen calendar days before the hearing, so they will be available for the public's review. Original photographs may be submitted to the Board during the public hearing, and additional duplicates are not required. The originals will be filed by the Board and retained in the Zoning Department records.

2.8 Filing fees. Each application, unless submitted by an officer, a board, or a commission of the Town, must be accompanied by a nonrefundable filing fee. The fees change from time to time, and a list of the current fees is available from the Zoning Department.

2.9 Withdrawal of applications. The Board may, in its discretion, permit an application to be withdrawn as follows:

2.9.1. Before the day of hearing. Before the day of the public hearing, an applicant may withdraw without prejudice by submitting a letter in writing requesting the withdrawal and stating the reason. The applicant need not attend the public hearing. Such withdrawal will not constitute unfavorable action on the part of the Board within the meaning of M.G.L. ch. 40A, Section 16 (on repetitive petitions).

2.9.2. At or during the public hearing. During the public hearing, an applicant can ask the Board to permit withdrawal of the application. The Board may, in its discretion, do so with or without prejudice.

2.9.3. After the public hearing or during Board deliberations. After the close of the public hearing, any request to withdraw the application will be granted only with prejudice. Such withdrawal will constitute unfavorable action on the part of the Board within the meaning of M.G.L. ch. 40A, Section 16 (on repetitive petitions).

3. HEARING ASSIGNMENT AND NOTICE

3.1 Assignment for hearing. Once an application is complete, it is assigned for hearing at a date and time set by the Board (or its agent). Hearings are usually held once a month on the first Wednesday, and applications are scheduled for 7:00 PM. When an individual hearing cannot be completed in one session, the chair will announce the continued date and time during the public hearing.

3.2 Notice of hearing. The Board shall cause a notice of the hearing time and place and of the general subject matter, sufficient for identification, to be published in a newspaper of general circulation in the Town of Uxbridge once in each of two successive weeks, with the first publication not less than 14 days before the day of the hearing; and to be posted

in the Uxbridge Town Hall for a period of not less than 14 days before the day of hearing. Notice shall also be sent by mail, postage prepaid, to: (a) the applicant and (if different) the owner of the property affected; (b) the owners of all abutting property; (c) the owners of land directly opposite on any public or private street or way; (d) the owners of land within 300 feet of the property line, all as they appear on the most recent applicable tax list and notwithstanding that the land is located in another city or town. Notice shall also be delivered to the Planning Board of the Town of Uxbridge, any other Town boards and parties deemed by the Zoning Board of Appeals to be interested in the subject matter of the hearing, and the planning boards of adjacent towns if the property abuts the town.

3.3 Contents of notice. Notices are normally prepared based on the content of the application and are often of broader scope than the application would strictly require, in order to permit flexibility. Any applicant may, by informing the Board in writing (on the application form or otherwise), suggest content for the legal notice.

4. HEARINGS

4.1 Hearings open to public. All hearings conducted by the Board are open to the public and conducted in accordance with the Massachusetts Open Meeting Law, MGL ch. 268A.2

4.2 Presiding member. The chair shall preside over all Board hearings, unless the chair is absent or recused. In such an absence or recusal, the members shall appoint a regular member to serve as acting chair. The chair or acting chair may administer oaths, summon witnesses, and call for the production of papers. The chair indicates the three voting members of the panel at the start of the hearing and appoints one or more associate members to the panel if a regular member of the Board is absent or recused. State law guarantees the right to attend the hearing, but the right to speak at the hearing is solely within the province of the presiding chair.

4.3 Personal appearance. An applicant must either be present at the hearing or represented by a lawyer or other authorized person. If no one appears at the hearing, the Board shall, in its discretion: (a) enter an unfavorable decision on the application; (b) continue the hearing; or (c) treat the absence as being a request for withdrawal with prejudice.

4.4 Conduct of hearings. The Board shall determine the order of presentation and all other conduct of a hearing. The chair generally will ask applicants to present their entire case, after which the Board will invite persons opposing or favoring the application to speak or present evidence and arguments. When the Board decides that further public comment is not forthcoming or is merely repetitive, the chair will close the public portion of the hearing, and no further public comment will be allowed, except in response to a direct question put by a Board member to a particular person.

4.5 Burden of proof. The applicant carries the legal burden to make a true and complete presentation of the case, to offer evidence on each of the pertinent legal requirements, and to provide all the relevant facts and documents necessary to a fair presentation of the issues for decision by the Board. Any false statement to the Board and any failure to state a material fact gives the Board legal grounds to revoke any favorable action it has taken on the application, whether or not the Board explicitly reserves the right to modify or amend its action. Opponents are under a similar legal duty to present their cases truthfully and completely. Under MGL ch. 40A, Section 15, the Board has the power to subpoena witnesses, take sworn testimony, and compel production of documents.

4.6 Quorum. *Per MGL* When a board is comprised of three members, the vote must be unanimous, whether regular or associate, and must be present in person to constitute a quorum and hear the matters designated by state law (special permits, variances, and appeals from the Zoning Enforcement Officer's decisions). *Per MGL 40B*, Sections 20 through 23 a majority vote of the board is allowed for Comprehensive Permit approval. If a quorum of the Board is not present at any scheduled hearing, those members present, though less than a voting quorum for purposes of special permits, variances, or appeals, constitute a sufficient quorum to vote to continue and to adjourn the hearing. Applicants can ask the Board to continue a hearing to another date when a full 3 member panel is available. Votes to continue and other administrative votes require a unanimous vote.

4.7 Continuance. The Board may continue any matter to another specified time, provided that notice of the date, time, and place of the continued hearing and its subject matter is announced at the hearing being continued; and further provided that the notice is posted visibly in the Uxbridge Town Hall for a period of at least two days prior to the specified time.

5. CONSULTING FEES

5.1 Payment of consulting fees. As provided in MGL ch. 44, Section 53G, the Board may impose a reasonable fee on any applicant for a special permit, variance, or other zoning relief under the Zoning Bylaws, to pay for the employment of an outside consultant to assist the Board in reviewing the application. These consulting fees are imposed in addition to any other fees assessed under these rules and regulations.

5.2 Procedure. Whenever the Board determines that it needs the services of an outside consultant, it will so notify the applicant. Once it designates an outside consultant, it will inform the applicant in writing, giving the consultant's name, an estimate of the consultant's total fee, and the amount of the initial deposit due from the applicant.

5.2.1 Means of appeal. The applicant may appeal the Board's selection to the Board of Selectmen, by sending the Board of Selectmen a written request for review of the Board's designation within 14 days of the applicant's receipt of the designation.

5.2.2 Grounds for appeal. Appeals are limited to claims that the consultant has a conflict of interest or does not possess the minimum qualifications under the statute. The required time limits for the Board to act on the underlying application are extended by the duration of the appeal.

5.2.3 Delivery of initial deposit. If the applicant does not file an appeal within the time period specified above, the applicant must deliver the initial deposit, in the form of a certified or bank check, to the Zoning Enforcement Officer for deposit with the Town Treasurer, within the time limits set in the designation letter.

5.2.4 Amount of deposit. The initial deposit amount may be any amount up to the estimated total of the consultant's fee. If the deposit amount is less than the estimated total, the Board can ask the applicant for supplemental deposits, which shall be due and payable within 14 days of the request.

5.2.5 Grounds for dismissal. Failure to pay the initial or any supplemental deposit is grounds for the Board to deny the special permit, variance, or other zoning relief.

5.2.6 Return of unused funds. The Town Treasurer will pay the consultant's bills, as approved by the Board, from the funds on deposit, and will return any interest earned by the deposited funds and any funds remaining unused at the conclusion of the applicant's matter, upon direction by the Board.

6. DECISIONS

6.1 Recommittal and rehearing. If the Board determines, at any time after the public hearing closes, that an application or the evidence submitted to support that application fails to conform in all respects with the requirements of state and local law or fails to entitle the applicant to the requested relief, it may, prior to making its decision, advise the applicant of its determination and provide the applicant an opportunity to revise the application or to submit additional materials into evidence. If the revision or additional evidence involves a substantial change from the original application or from the evidence given at the hearing, the Board must hold a new hearing thereon, notice of which shall be given as with an original application, before making its final decision.

6.2 Required vote of the Board. The concurring unanimous vote is necessary to approve a request for a special permit under the Zoning Bylaws; to grant a variance in the application of the Bylaws; or to reverse an order or decision of the Zoning Enforcement Officer.³ The unanimous vote of the members of the Board is necessary to reverse any order or decision or to grant a permit under MGL ch. 41, Sections 81Y through 81CC inclusive, and a majority vote of the Board to grant a comprehensive permit under MGL ch. 40B, Sections 20 through 23. Administrative matters, votes

to reconsider, votes to adjourn, and votes to continue hearings are decided by a unanimous vote of the members present.

6.3 *Time limits.* The time limits for the Board's decisions shall be in accordance with state and local law. When matters are continued, the Board will ask the applicant to sign a form extending the time limits.

6.4 *Filing of decisions.* Three original decisions of the Board on each application or appeal, stating the reasons for the decision and the vote of each member upon each question, shall be filed in the office of the Town Clerk within a 14 day period after said decision by the Board is granted or denied, where it becomes a public record. Copies are furnished to the administrative officer whose decision is appealed (in the case of an appeal), to the Zoning Enforcement Officer in each matter in which he maintains a file, to the applicant or aggrieved person, and to the owner of the land (if the owner is not the applicant). A copy is retained in the permanent records of the Board and, for a variance or special permit, a copy of the decision and all plans referred to therein are filed with the Planning Board.

6.5 *Notice of decision.* Notice of each decision of the Board, setting forth the date on which the decision was filed in the office of the Town Clerk and summarizing the action of the Board, will be mailed promptly to everyone who was sent notice of the hearing and to every person present at the hearing who asks for a copy of the decision and gives an address to which the notice should be sent. Each notice shall specify that appeals, if any, must be made pursuant to MGL ch. 40A, Section 17, and must be filed within 20 days after the decision is filed in the office of the Town Clerk.

6.6 *Limited or conditional variances and special permits.* When the Board decides a variance or special permit may be granted if it is limited in time or use or is conditioned upon compliance with regulations to be made and amended from time to time thereafter and specially designed to safeguard the zoning district and the Town, it shall impose such limitations and conditions by setting them forth in its decision, causing them to be made a part of the building permit to be issued, and issuing the landowner a notice containing the landowner's name and address, identifying the land affected, and stating that a limited or conditional variance or special permit has been granted as is set forth in the decision of the Board on file in the office of the Town Clerk.

No variance or special permit, or any extension, modification, or renewal thereof, shall take effect until a copy of the written decision (which must bear the Town Clerk's certification that 20 days have elapsed and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied) is duly recorded by the Town Clerk in Worcester Registry of Deeds, indexed in the grantor index under the name of the record owner or is registered with Southern Worcester County District Court and noted on the owner's certificate of title. Each such

decision shall be recorded promptly after expiration of the period for appeal set by law.

6.7 Lapse of decisions. The rights authorized by the Board's orders and decisions shall lapse as follows:

6.7.1 Lapse of variance. If the rights authorized by a variance are not exercised within one year of the date the variance was granted, they lapse and may be reestablished only after notice and a new hearing, pursuant to MGL ch. 40A, Section 10.

6.7.2 Lapse of other rights. If the rights granted by the Board, other than variances, are not used or exercised, they shall lapse in accordance with the time limits set forth in MGL ch. 40A and the Zoning Bylaws.

6.8 Amendment, modification, or correction of orders and decisions. The Board may amend, modify, or revoke its decisions as follows:

6.8.1 Before final action. At any time before its decision is filed with the Town Clerk, the Board may modify or amend that decision, provided that the statutory time limits for taking final action are met.

6.8.2 After final action but before the appeal period has run. At any time prior to the expiration of 20 days after the decision is filed with the Town Clerk, the Board may modify or amend its decision, provided that notice of the modification or amendment is given to all persons to whom notice of the hearing was sent.

6.8.3 At any time, to correct inadvertent clerical errors. At any time that the Board discovers a error or omission in a decision, the Board may correct an inadvertent or clerical error, provided the correction does not constitute a reversal of a conscious decision or grant different relief.

7. COMMUNICATIONS WITH THE BOARD

7.1 Written communications only. Other than at a hearing or as e-mail, all communications to the Board must be in writing and in nine copies, submitted to the Zoning Department for distribution to the Board members and filing in the permanent files.

7.2 Electronic communications. Messages by e-mail can be sent only to the Zoning Department, for distribution to the Board members and filing as a public record.

7.3 No ex parte communications. No applicant or interested party may hold an ex parte discussion (i.e., a discussion outside the forum of the public hearing) of any adjudicatory matter pending before the Board prior to the hearing or before a continued hearing.

The ex parte communication rules apply to *adjudicatory decisions*, which are those that relate to the zoning on a particular site, and not to *legislative decisions*, which are those that have a broader or more general application in the community. For example, amending the zoning bylaws is a legislative decision; granting a variance for a particular site is an *adjudicatory* decision.

7.4 Submissions in advance of hearing. Materials must be submitted no later than 14 calendar days in advance of the hearing, so that interested parties and Board members have an opportunity to review the

submissions. The Zoning Clerk shall gather all the material, applications, maps, etc. and place them in each members folder which shall include the Zoning Board Minutes from the previous months meeting and shall have them ready for the Board members to pick up 14 days before the Public Hearing date. Should the applicant submit written materials, other than letters from the public, at the hearing, the Board has discretion to continue the hearing to a later date, to allow for public and Board review.

7.5 *Legal submissions.* Arguments and briefs may be submitted, as well as requests for particular findings, orders, or decisions, which the Board in its discretion may adopt or reject. All arguments and briefs as well as requests for particular findings, orders, or decisions must be furnished in sufficient quantity to permit distribution to all members of the Board, to all other interested persons, and to the file.

8. EFFECT OF RULES

8.1 *Waiver by the Board.* The Board may, for any particular application, waive compliance with any portion of these rules and regulations, but only if it finds that doing so does not impair its ability to reach a fair decision and would be fair to both the applicant seeking the waiver and the other applicants who did not or will not seek waivers.

8.2 *Waiver by applicants and other parties.* The failure of the Board or any applicant or other person to comply with these rules and regulations shall be deemed waived unless someone objects *at the hearing* with regard to any matter arising before or during the hearing; or *within the statutory period for appeal from the decisions of this Board* as to any matter arising after hearing.

9. AMENDMENT

This Board may at any time amend or modify these Rules and Regulations with the concurring unanimous vote of the members and the alternates , and the amendment or modification shall take effect when a copy is filed with the Town Clerk.

***First adopted by unanimous vote of the Zoning Board of Appeals of the
Town of Uxbridge on 12/07/05***

Filed with Town Clerk on 12/08/05

Signature of Town Clerk_____

ZONING BOARD OF APPEALS SIGNATURES:

Judith Stocks, Chairman

Ernie Esposito, V. Chairman

Francis Susskey, Member

Carol Masiello, Alternate Member

John Higgins, Alternate Member